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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,017	09/23/2003	Daniel Dale Witt		1421

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Dan Witt
51 Baldwin St.
Chilton, WI 53014

EXAMINER
BUECHNER, PATRICK M

ART UNIT	PAPER NUMBER
3754	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/668,017	WITT, DANIEL DALE	
	Examiner	Art Unit	
	Patrick M Buechner	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *23 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 2* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 begins by claiming a "spout", which is an apparatus, and goes on, in line 3, to claim a "method" of establishing an air pathway. It is not clear whether applicant is claiming an apparatus with functional language, or a method that recites required structure. While there is no *per se* rule prohibiting a mixing of apparatus and method claims, if the scope of the claimed invention cannot be determined, rejection under 35 USC 112 2nd paragraph.

4. Given that the scope of the claims is unclear, the claims have been examined as best could be understood by the examiner.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller (US 880,669).

Keller discloses a spout (2) affixed to a container (1) having a flexible tube (8) and a float (9). This arrangement functions to allow air to ingress from outside the container to an air pocket within the container (Figure).

Keller makes no disclosure of the size of the spout/tube/float combination, however since this length will be dependant upon the size of the bottle, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the appropriately sized spout/tube/float combination of Keller for a specific bottle, and if the bottle is large enough, the spout/tube/float combination would be at least three inches in length.

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Law (US 5,419,378) in view of Keller.

Law discloses a container (12) with a separable spout (90) having an air vent tube (96), which during pouring is inherently in communication with an air pocket inside the container. Law also discloses fluid obstructing the air vent tube to stop the flow of fluid from the pour spout

(column 12, lines 48-56). Some fluid will inherently flow into the air vent tube until the pressures inside and outside the container have equalized.

Law does not disclose a flexible tube or float and also dose not disclose the size of the spout/tube/float combination.

Keller, as discussed above in 7, teaches a flexible air vent tube with a float.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the apparatus of Law with the flexible tube and float as taught by Keller, because law states (column 15, lines 5-19) that the air vent can become filled with fluid, and won't purge when the container is right side up, hence causing a delay in pouring. The flexible tube and float of Keller would keep the end of the vent tube in the air pocket of the container at all times and would eliminate the air-lock problem.

Again there is no disclosure of the size of the spout/tube/float combination, however since this length will be dependant upon the size of the bottle, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the appropriately sized spout/tube/float combination of Law in view of Keller for a specific bottle, and if the bottle is large enough, the spout/tube/float combination would be at least three inches in length.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Raynor et al. (US 245,401), Robertson (US 1,190,586), Edelmann (US 2,847,042), Hestehave (US 4,588,111), Vachon (US 4,958,668), Kowalczyk (US 5,711,355), and Vachon (US 6,155,464).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (703) 308-2602. The examiner can normally be reached on 7:00am-4:30pm M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PB

KENNETH BOMBERG
PRIMARY EXAMINER